



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1121]

Certain Earpiece Devices and Components Thereof; Commission Determination to Vacate the Domestic Industry Finding As to One Asserted Patent; Remand the Investigation in Part to the Presiding Administrative Law Judge for Further Proceedings as to That Asserted Patent; and Extend the Target Date; Issuance of a General Exclusion Order, A Limited Exclusion Order, and Cease and Desist Orders as to the Other Five Asserted Patents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the presiding administrative law judge's ("ALJ") domestic industry finding with respect to U.S. Patent No. 9,398,364 ("the '364 patent"), remand the investigation in part to the ALJ for further proceedings with respect to that patent consistent with its concurrently issued opinion and remand order, and extend the target date for completion of the investigation. The Commission has also determined to issue: (1) a general exclusion order prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 ("the '852 patent"); claims 1 and 8 of U.S. Patent No. 9,036,853 ("the '853 patent"); claims 1 and 6 of U.S. Patent No. 9,042,590 ("the '590 patent"); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 ("the '287 patent"); (2) a limited exclusion order prohibiting respondent V4ink Inc. ("V4ink") from importing certain earpiece devices and components thereof that infringe claim 1 of U.S. Patent No. 8,311,253 ("the '253 patent"); and (3) cease and desist orders against certain respondents that were found in default or

had not participated in the above-captioned investigation. The investigation is terminated with respect to these five patents.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 29, 2018, based on a complaint filed on behalf of Bose Corporation ("Bose") of Framingham, Massachusetts. 83 FR 30,776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of the '852, '853, '590, '253, '287, and '364 patents. The complaint further alleges that an industry in the United States exists as required by section 337.

The notice of investigation named fourteen respondents: (1) 1MORE USA, Inc. ("1MORE") of San Diego, California; (2) APSkins of Seattle, Washington; (3) Beeebo Online

Limited (“Beebo”) of North Las Vegas, Nevada; (4) iHip of Edison, New Jersey; (5) LMZT LLC of Brooklyn, New York; (6) Misodiko of ShenZhen, GuangDong, China; (7) Phaiser LLC (“Phaiser”) of Houston, Texas; (8) Phonete of Shenzhen, China; (9) REVJAMS of New York, New York; (10) SMARTOMI Products, Inc. of Ontario, California; (11) Spigen, Inc. of Irvine, California; (12) Sudio AB of Stockholm, Sweden; (13) Sunvalley Tek International, Inc. of Fremont, California; and (14) TomRich of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation.

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent SMARTOMI Products, Inc. to V4ink. On October 29, 2018, the ALJ granted the motion. *See* Order No. 10 (Oct. 29, 2018), *not rev’d by* Comm’n Notice (Nov. 23, 2018); 83 FR 61168 (Nov. 28, 2018); 83 FR 62900 (Dec. 6, 2018). Bose filed and served its amended complaint on February 21, 2019.

During the course of the investigation, Bose settled with the following respondents: APSkins; Zeikos, Inc.; LMZT LLC; Spigen, Inc.; Sudio AB; and Sunvalley Tek International, Inc. *See* Order Nos. 8 and 9 (Oct. 19, 2018), *not rev’d by* Comm’n Notice (Nov. 9, 2018); Order No. 11 (Oct. 29, 2018), *not rev’d by* Comm’n Notice (Nov. 27, 2018); Order No. 12 (Nov. 26, 2018), *not rev’d by* Comm’n Notice (Dec. 19, 2018); Order Nos. 14 and 15 (Feb. 21, 2019), *not rev’d by* Comm’n Notice (Mar. 11, 2019). In addition, with the exception of Spigen, Inc., consent orders were issued against all of these respondents. *Id.* Thus, the investigation has been terminated with respect to these six respondents.

Five other respondents have been found in default pursuant to Commission Rule 210.16, 19 CFR 210.16: Beeebo; Misodiko; Phaiser; V4ink; and TomRich (collectively, “the Defaulting Respondents”). *See* Order No. 7 (Sep. 20, 2018); Order No. 13 (Dec. 11, 2018), *not rev’d by* Comm’n Notice (Dec. 21, 2018).

On February 8, 2019, Bose moved for summary determination of a violation of section 337. Bose filed a corrected motion on March 1, 2019. Thereafter, Bose filed several replacement exhibits and a supplemental index.

The remaining three respondents, 1MORE, Phonete, and REVJAMS (collectively “the Non-Participating Respondents”), have not submitted any response, appeared, or otherwise participated in the investigation despite being served with the complaint or amended complaint, and the motion for summary determination of violation. The three Non-Participating Respondents and the five Defaulting Respondents were the subject of Bose’s motion for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose’s motion in substantial part and supporting the requested remedy of a general exclusion order.

On June 28, 2019, the ALJ issued the subject ID and his Recommended Determination (“RD”) on remedy and bonding. The ID grants in part Bose’s motion for summary determination of a violation of section 337. Specifically, the ALJ found, *inter alia*, that Bose established that the importation requirement is satisfied as to each Defaulting Respondent and Non-Participating Respondent and each accused product; that other than infringement of claim 7 of the ’852 patent with respect to the Misodiko, Phonete, and TomRich products, Bose established infringement of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent;

claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; claims 1, 7, and 8 of the '287 patent; and claims 1 and 11 of the '364 patent; and that Bose satisfied the domestic industry requirement for each asserted patent. In addition, the ALJ recommended that the Commission issue a general exclusion order, cease and desist orders, and impose a 100 percent bond during the period of Presidential review. No petitions for review were filed.

On August 14, 2019, the Commission determined to review the ID in part and requested briefing on one issue it determined to review, and on remedy, the public interest, and bonding. 84 FR 43159-161 (Aug. 20, 2019). Specifically, the Commission determined to review and reverse the ID's finding that Bose has established infringement of claim 7 of the '852 patent with respect to Beebo's Dodocool Earhooks. The Commission also determined to review the ID's finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent. The Commission further determined to review and take no position on the ID's finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraph 337(a)(3)(C) with respect to the asserted patents. The Commission determined not to review the remainder of the ID. The Commission's determination resulted in finding a violation of section 337 by reason of infringement of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; and claims 1, 7, and 8 of the '287 patent; and the satisfaction of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to these patents.

On August 28, 2019, Bose and OUII filed initial written submissions regarding the issue on review, and on remedy, the public interest, and bonding. That same day, non-party Anker

Innovations Limited (“Anker”) filed a written submission concerning remedy. On September 5, 2019, Bose filed a response to Anker’s submission.

Having examined the record of this investigation, including the ID and the submissions received, the Commission has determined to vacate the ID’s finding that Bose has demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the ’364 patent. Accordingly, the Commission has determined to remand the investigation in part to the ALJ for further proceedings with respect to the ’364 patent consistent with the Commission’s concurrently issued opinion and remand order. The target date is extended to December 2, 2019. Commissioner Schmidtlein does not join the decision to remand the investigation. Instead, she would affirm on modified grounds the determination that Bose demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the ’364 patent.

As for the remaining asserted patents, the Commission has determined that the appropriate form of relief in this investigation is: (a) a general exclusion order prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; and claims 1, 7, and 8 of the ’287 patent; (b) a limited exclusion order prohibiting respondent V4ink from importing certain earpiece devices and components thereof that infringe claim 1 of the ’253 patent; and (c) cease and desist orders prohibiting respondents 1MORE, Beebo, Phaiser, REVJAMS, V4ink, Misodiko, Phonete, and TomRich from further importing, selling, and distributing infringing products in the United States. The Commission has also determined that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1)

(19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of these remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the exclusion orders. The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is hereby terminated with respect to the '852, '853, '590, '287, and '253 patents.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: October 31, 2019.

Lisa Barton,
Secretary to the Commission.

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